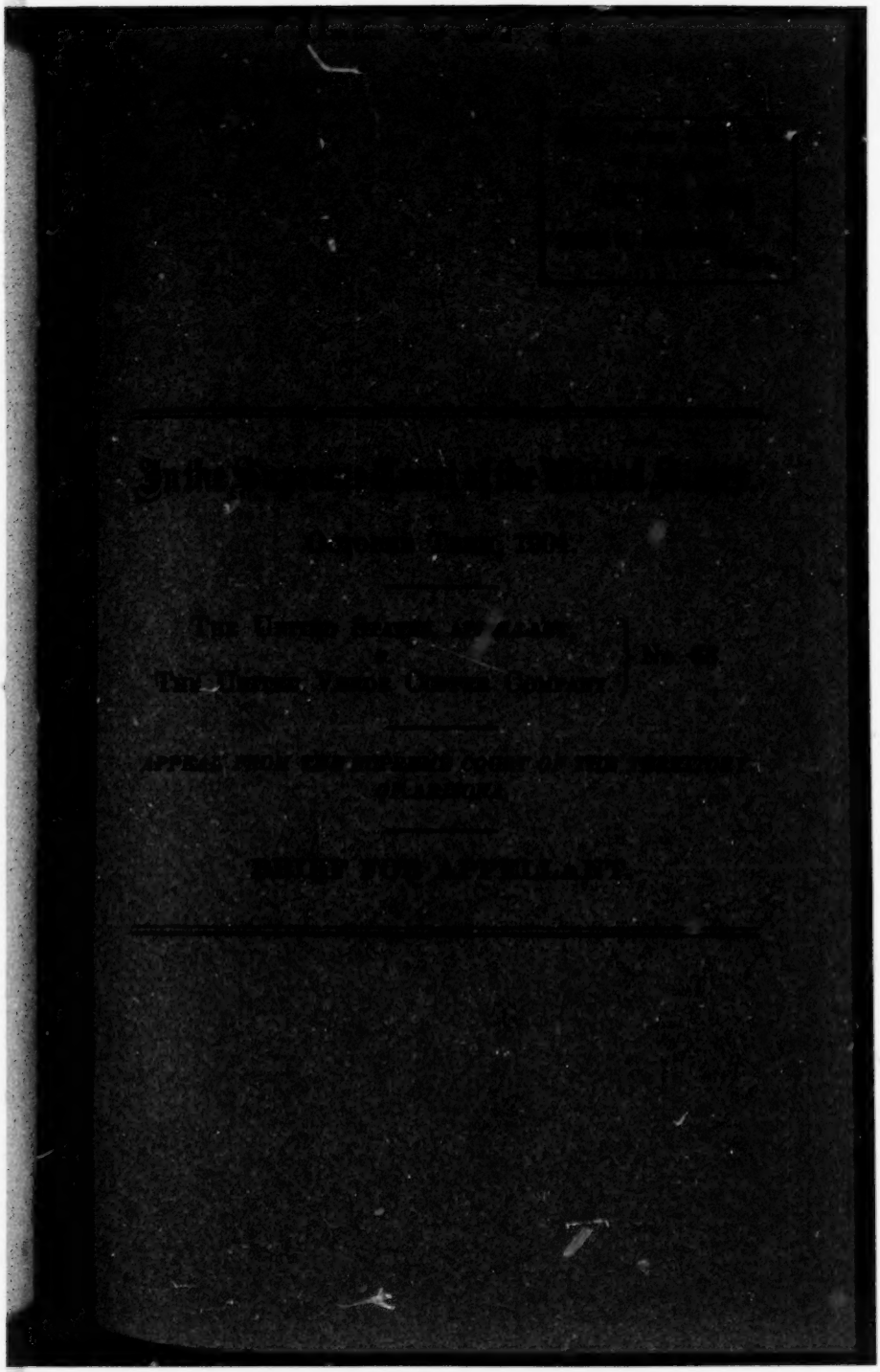

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v
THE UNITED VERDE COPPER COMPANY. } No. 68.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

BRIEF FOR APPELLANT.

STATEMENT.

This action was brought by the United States against the United Verde Copper Company, a corporation having its residence and principal place of business at Jerome, Arizona Territory, to recover the sum of $38,976.75, the value of cord wood wrongfully cut and removed from unsurveyed public mineral lands of the United States by one Rafael Lopez, a citizen of the United States and a bona fide resident of the Territory of Arizona, and sold to the defendant company. The defendant used the timber for the purpose of roasting ore at its mines, situated in the Territory of Arizona, which action the Government claims was not within the terms of the act of Congress

of June 3, 1878, and the rules and regulations of the Secretary of the Interior promulgated under authority of the act.

The complaint alleged such wrongful use on the part of the defendant company. A general and a special demurrer were filed to the complaint, the latter setting up that the cutting of timber from the public mineral lands of the United States for the purpose of roasting ores is lawful under the act of June 3, 1878. Other matters of defense were set forth which are not necessary here to be considered. The demurrer was sustained, and the plaintiff, declining to amend, took an appeal to the supreme court of the Territory of Arizona, which court affirmed the ruling of the lower court, and the opinion of the supreme court of Arizona upon which the decision is based is brought up here with the record.

The act of June 3, 1878, upon which the defendant relies as a defense to the suit, is as follows:

> That all citizens of the United States, and other persons, bona fide residents of the State of Colorado or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States except for mineral entry, in either of said States, Territories, or districts of which such citizens or

persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

Such of the rules and regulations of the Secretary of the Interior promulgated under the authority of this act as may be material to this case are as follows:

* * * * *

4. The uses for which the timber may be felled or removed are limited by the wording of the act to "building, agricultural, mining, or other domestic purposes."

5. No timber is permitted to be felled or removed for purposes of sale or traffic, or to manufacture the same into lumber or other timber product as an article of merchandise, or for any other use whatsoever, except as defined in section 4 of these rules and regulations.

* * * * *

7. No timber is permitted to be used for smelting purposes, smelting being a separate and distinct industry from that of mining.

* * * * *

10. These rules and regulations shall take effect February 15, 1900, and all existing rules and regulations heretofore prescribed under said act by this Department are hereby rescinded.

ARGUMENT.

RULE 7 IS WITHIN THE AUTHORITY GRANTED TO THE SECRETARY OF THE INTERIOR BY THE ACT OF JUNE 3, 1878.

Section 3 of the act in question shows the solemnity with which Congress acted in clothing the Secretary with authority to promulgate rules and regulations under which the license afforded by the act is to be exercised. That section declared that any person who shall violate the provisions of the act, or *any rules and regulations in pursuance thereof* made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and provides a penalty. It will also be noticed that in the first section of the act the privilege

is given to residents of certain States and Territories, *subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon said lands, and for other purposes.*

Not only did Congress solemnly grant the Secretary of the Interior a broad authority in regulating the scope of license granted by the act, but the Supreme Court has affirmatively recognized the validity and binding force of the regulations promulgated by the Secretary. The case of the *Northern Pacific Railroad Company* v. *Lewis* (162 U. S., 376) is a clear recognition of the controlling effect of the regulations. The court in that case said:

> No one had the right to cut a stick of timber thereon without its consent. * * * The Government, however, chooses to make some exceptions in favor of certain classes of people to whom was given the right to cut timber for certain purposes. * * * The cutting and removing were to be done *under rules and regulations prescribed by the Secretary of the Interior.* Outside of these exceptions, there was no right to any person to cut a particle of timber on these public lands of the Government.
>
> The right to cut is exceptional, and quite narrow, and for specified purposes only. The broad, general rule is against the right. If the plaintiffs had acquired the right by reason of a compliance with the provisions of the statute, the facts should have been shown by them. The presumption in the absence of evidence is that the cutting was illegal.

In the case of *United States* v. *Williams* (12 Pac. (Mont.), 851), the question of the validity of Rule 8 of the Secretary's regulations was before the court. Said rule is as follows:

> No growing trees of any kind whatsoever less than 8 inches in diameter are permitted to be cut.

The complaint alleged a violation of this rule, and in overruling a demurrer to the complaint the court says:

> No one has a right, independently of the statutes, to cut the timber on the public lands of the United States. The statute is the license to certain persons to cut and remove timber belonging to the Government for certain specified purposes. Certainly, Congress, in its generosity granting this permission, had the right to do so upon proper conditions, and to provide that the use of the license given *should be restricted by* rules and regulations to be prescribed by the proper Cabinet officer for the protection of the property of the Government.

In many cases the Supreme Court has recognized the authority of Congress to grant a privilege or license and to clothe an executive officer with the right to grant or refuse or restrict such permission under such rules and regulations as he may see fit to adopt in view of conditions as they exist from time to time. See *Williams* v. *United States*, 138 U. S., 514, 524; *Field* v. *Clark*, 143 id., 649, 680, 692; *Caha* v. *United States*, 152 id., 211, 218, 220; *in re Kollock*, 165 id., 526; *United States* v. *Ormsbee*, 74 Fed. Rep., 207, 209;

United States v. *City of Moline*, 82 id., 592, 598; *Wilkins* v. *United States*, 96 id., 837, 839, 841; *United States* v. *Dastervignes et al.*, 122 id., 30; *The Cin. Wil. & Z. Railroad Company* v. *Commissioners of Clinton County*, 1 Ohio St., 77, 87; *Locke's Appeal*, 72 Pa. St., 22 P. F. Smith, 491, 498, 499; *Port Royal Mining Company* v. *Hagood et al.*, 2 Law Rep. Ann., 841, 843, 844.

In the case of *United States* v. *Williams* (*supra*) the court uses the following language:

> It is obvious, it is common knowledge, that in the administration of such large and varied interests as are intrusted to the Land Department, matters not foreseen, equities not anticipated, and which are therefore not provided for by express statute, may sometimes arise, and, therefore, that the Secretary of the Interior is given that superintending and supervising power which will enable him, in the face of these unexpected contingencies, to do justice.

What authority Congress intended to grant to the Secretary by the concluding words, "and for other purposes," is not easily determined. No judicial construction has ever been given them. To give them their ordinary meaning and effect is to hold that any authority not given by the specific grant is included in these general words; so that the latitude given to the Secretary would seem to be unlimited. When reference is had to the history of the original bill as debated and enacted the legislative intent becomes plain. The original bill as it first passed the Senate and as reported to the House (see Congressional Record, part 4,

Forty-fifth Congress, second session, pp. 3327–3328) provided that the license to cut timber on public mineral lands should be "subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the undergrowth upon such lands." This provision was amended in the House so as to read as it stood when the bill became a law, viz, "subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes."

Referring to the phrase "and for other purposes," as used in the act, Judge Knowles, in *United States* v. *Mullan Fuel Company* (118 Fed., 663), said:

> Reputable attorneys might well differ as to the power conferred upon the Secretary of the Interior in the clause.

But that it has a meaning and was used advisedly is deducible from the fact that it was an amendment reported after serious and solemn deliberation by a committee. Prior to the adoption of the amendment by the House the following proceedings were had therein (see Congressional Record, part 4, Forty-fifth Congress, second session, p. 3328):

> Mr. FORD. Allow me to say that this bill seems to allow unlimited license to cut timber on the public lands to an unlimited number of persons. * * * The bill provides that the Secretary of the Interior may make rules and regulations to protect undergrowth, but it does

> not provide that he may make any regulations to protect the timber or to control this *unlimited license* which is given by the bill to cut timber. It seems to me that for the public good the Secretary of the Interior ought to be authorized to provide rules and regulations to *govern* this matter of cutting timber on the public lands.

Thus it seems that the purpose of the amendment was to clothe the Secretary with power to control, govern, and limit the license afforded by the bill.

The act in question was passed in 1878, when the West was thinly settled and when the spirit of encouragement to the settler was running high in Congress. Without timber he could not build his house, nor till his ground, nor work his mine. So the act of 1878, which applies to certain States and Territories which had not been fully developed and where timber was scarce, was passed. But Congress seems to have realized that it could not afford to grant to the public a right to take timber even for these purposes free from restraint or limitation. Nor could Congress know the real limitations under which the license should be exercised. Hence the Secretary of the Interior, as the guardian of the public lands, was authorized and empowered to determine in advance what might or might not be done, and certainly no greater or more comprehensive authority could be delegated than that which is carried in the language of the act. The license is to be exercised "subject to rules and regulations to be made by the Secretary for the protection of the timber

and of the undergrowth *and for other purposes.*" As was said in the Williams case (*supra*):

> It would be impossible for Congress to prescribe every detail governing the administration and management of every department of government; and if it were possible, it would not be wise.

And in Locke's Appeal (*supra*):

> There are many things upon which wise and useful legislation must depend which can not be known to the lawmaking power, and must therefore be subject to inquiry and determination outside of the halls of legislation.

We do not contend that the Secretary of the Interior could suspend the operation of the act by promulgating a rule to that effect. But we do contend, and earnestly urge upon the court, that he has the power, by the very language of the act, to say within what limits, under each of the heads, viz, building, agricultural and mining, the license may be exercised. Congress used the word "mining," but it realized that it could not foresee all the sins that might be committed in its name. The same as to the other general purposes enumerated in the act. Hence the power in the Secretary to govern its use, and the wisdom of the provision is seen when we think of the public forests going up in smoke from raging fires built by the greedy licensee, who claims that mining embraces everything and every process in which metal plays a part. We repeat that the Secretary of the Interior—the one person capable of determining what is a proper

exercise of the license—is constituted the arbiter, and that any limitation he may prescribe, short of an absolute suspension of the right, has the force of law under the terms of this act.

Finally, we submit to the court that the case at bar comes within the well-known principle so often applied by this court that the construction of an act of Congress by those charged with its execution should not be disregarded by the judiciary unless the construction be clearly wrong.

> *United States* v. *Johnston*, 124 U. S., 236.
> *Heath* v. *Wallace*, 138 U. S., 573.
> *Hawley* v. *Diller*, 178 U. S., 476.

If there be a doubt as to the meaning of Congress the construction given by the Executive Department should control.

> *Pennoyer* v. *McConnaughy*, 140 U. S., 1.
> *United States* v. *Hill*, 120 U. S., 169.
> *United States* v. *Philbrick*, 120 U. S., 52.

In *Heath* v. *Wallace* (*supra*) the question was whether lands reported as "subject to periodical overflow" were "swamp and overflowed lands" within the meaning of the act of July 23, 1866, and Mr. Justice Lamar, delivering the opinion of the court, said:

> Moreover, if the question be considered in a somewhat different light, viz, as the contemporaneous construction of a statute by those officers of the Government whose duty it is to administer it, then the case would seem to be brought within the rule announced at a very early day in this court, and reiterated in a

> very large number of cases, that the construction given to a statute by those charged with the execution of it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons.

Such is our view of this act and the grant of power to the Secretary. But the learned judge below gives no effect whatever to the words of the act granting such power. His course in this respect was contrary to a very fundamental principle of construction. The judgment of the court is based upon only a part of the act. The construction placed upon the act by the Secretary was entirely ignored. If this action of the court below be correct, and we must look squarely at the word "mining" as used in the act, without regard to the authority given to the Secretary or to his construction, then the Government is prepared to make its case upon that theory, and we therefore leave this branch of the case with that end in view.

ROASTING ORE IS NOT A "MINING" PURPOSE.

Ignoring the regulations of the Secretary, made in pursuance of the act of Congress, let us see if the act affords the privilege contended for by the defendant. Said the supreme court of Arizona (Rec., p. 9):

> It is a matter of common knowledge that in this Territory the roasting of ore at the mines from which it is taken is ordinarily accomplished by piling the ore and the wood mingled with it in piles in the open air, and by igniting the wood the fire is communicated to the sulphurous or other combustible ingredients in the

ore, and thus, by the heat generated by its own combustion and that of the wood mingled with it, the volatile substances are driven off in vapor, smoke, and gases from the ore thus treated. By this treatment the ores that are extremely sulphide or highly charged with other volatile substances are relieved from a large portion thereof and are the more readily treated by smelting or other processes of reduction, and besides require less fluxing material for such reduction and are also lighter in weight, and for that reason when shipped to other points for smelting or further treatment of any kind cost less for freight. Construing the pleading strictly against the pleader, as it is our duty to do, we must assume that the wood was not used in a custom smelter, but was used by the defendant for roasting ore obtained from its mines in the ordinary manner above described.

SMELT. The definition of the verb smelt, contained in the Standard Dictionary, is as follows:

> To obtain (a metal) from the ore by a process that includes fusion; also, in a more limited sense, to reduce (ores, sweepings, metallurgical products, etc.) by fusion in a furnace.
>
> In its restricted sense *smelting* is confined to a single operation, as the fusion of an iron ore in a shaft furnace, the reduction of a copper matte in a reverbatory furnace, and the extraction of a metal from sweepings in a crucible, but in its general sense it includes the entire treatment of the material from the crude ore to the finished metal, and embraces (1) *the calcination or roasting, by means of which the sulphur*

and other volatile constituents are expelled, (2) the reduction of the resulting products in a furnace, or the smelting proper, and (3) the refining of the product from the second operation.

The definition given in the Century Dictionary is practically the same.

And what is mining?

Mining is the act or business of making mines or of working them.—Webster.

Mining is the work of a miner or mine prospector.—Standard Dictionary.

MINE, v., 1. To dig a mine or pit in the earth; to get ore, metal, coal, or precious stones out of the earth; to dig in the earth for minerals; to dig a passage or cavity under anything in order to overthrow it by explosives or otherwise.

2. To form a subterraneous tunnel or hole; to form a burrow or lodge in the earth.

II, 1. To dig away or otherwise remove the substratum or foundation of; to lay a mine under; to sap; to undermine; hence, to ruin or destroy by slow degrees or secret means. 2. To dig into, for ore or metal. 3. To get metals out of the earth by digging.

MINE. n. 1. A subterranean cavity or passage; especially (a) a pit or excavation in the earth from which metallic ores, precious stones, coal, or other mineral substances are taken by digging; distinguished from the pits from which stones for architectural purposes are taken, and which are called quarries; (b) (Mil.) a cavity or tunnel made under a fortification or other work for the purpose of blowing up the superstructure with some explosive

> agent. 2. Any place where ores or metals or precious stones are got by digging or washing the soil, as a placer mine. 3. Figuratively, a rich source of wealth or other good.
>
> MINER. n. One who mines. A digger for metals, etc.; one engaged in the business of getting ore, coal, or precious stones out of the earth. *One who digs military mines.*
>
> MINING. n. The act or business of making mines or working them.
>
> MINING. a. Of or pertaining to mines, as mining engineer, mining machinery, etc.

But one case in which this question was discussed has been found. (*United States* v. *Richmond Mining Co.*, 40 Fed., 415.) But the point was not decided, although the case was cited by defendant and referred to in the opinion of the court below. After discussing the question of refining the product after it has been taken from the mine, and whether roasting ore is mining, the court in the *Richmond Company case* said (p. 419):

> But not to dwell upon this point, we may concede that reducing ores and refining the product *may not be strictly mining.* Still this business itself is a *domestic* industry of the highest importance to the miner and the public.

Thus, the court will see at once that the real question in issue in the case at bar was not decided in the Richmond Company case. The court, in the latter case, held the words *other domestic purposes* to embrace smelting. This ruling, we think, is entirely erroneous, and will be discussed farther on in this brief.

That roasting ore is a part of the process of smelting may clearly be seen from the very lucid explanation of that process given by the learned judge, and hereinbefore quoted, and from the definition of "smelt" as given by the Standard Dictionary, particularly the first process. Again to quote from the opinion of the court below:

> It is a matter of common knowledge that in this Territory the roasting of ore at the mines from which it is taken is ordinarily accomplished by piling the ore and the wood mingled with it in piles in the open air, and by igniting the wood the fire is communicated to the sulphurous or other combustible ingredients in the ore and thus, by the heat generated by its own combustion and that of the wood mingled with it, the volatile substances are driven off in vapor, smoke, and gases from the ore thus treated.

And the first process of smelting as given by the Standard Dictionary is, in substance, the same, viz:

> (1) The calcination or roasting by means of which the sulphur and other volatile constituents are expelled.

And yet the court below, at page 9 of the record, says:

> We believe that the defendant in this instance was fully protected by the statute in using the wood sued for, under the license granted in the act to use the wood for mining purposes, unless *the roasting of ores should properly be classed as a part of the process of smelting* and is, for that reason, not included in the general classification of mining purposes.

Roasting is a part of the process of smelting and we submit that by its own reasoning the supreme court of Arizona should have reversed the trial court. Assuming, however, that smelting and roasting are distinct processes, one is certainly as far removed from mining as the other.

There is nothing in the opinion of the court which supports its view that the practical, usual, or ordinary meaning of the terms "mining" or "mining purposes" embraces any of the processes for extracting mineral from the ore after the same has been dug or taken from the ground. None of the text-books on mining law furnishes any support whatever for the meaning given to these terms by the court. Snyder on Mining Law, 2d vol, sec. 134, says:

> Mining in its general sense comprehends and includes the *digging and searching* for precious and economical metals and minerals.

There is a striking difference in the use of timber for shafting and shoring purposes in legitimate mining and a ruthless waste of timber for fuel, particularly when the fuel is used in such enormous quantities as are necessary in the process of smelting. To claim that Congress intended that the forests should be burned and wasted in such a manner is beyond all reason. And it is just as reasonable to claim that timber taken under the statute may be used to build a railroad for the purpose of transporting the product to market, as to contend that it may be used for the various processes through which the ore passes after it is mined.

WHAT DID CONGRESS MEAN BY "OTHER DOMESTIC PURPOSES?"

Having discussed the specific word "mining," and having shown to the court, as we think, that the defense to this suit can not rest thereon, we refer to the only other possible source of license in the act, viz, the phrase "or other domestic purposes," which seems to be the basis of the decision of the court in the Richmond Company case.

In the first place, the Richmond Company case was decided prior to the promulgation of Rule 7 by the Secretary. The decision in that case was rendered November 23, 1889, and the rules adopted by the Secretary, pursuant to the authority given him by the act of Congress, were issued January 18, 1900. (Rec., p. 7.) And the court below, in the case now at bar, considered this a very important and material fact, for in commenting upon the Richmond Company case, it said:

> This case was taken on writ of error to the United States Supreme Court, but was there dismissed on motion of the plaintiff in error without a review of the same, thus leaving the decision above cited the only authority we have on this question. *This case was tried, however, prior to the adoption and promulgation of the rule (7) above quoted.* (Rec., p. 9.)

The statute does not plainly indicate the sense in which Congress used the word "domestic." That word appears to have four possible meanings:

> (1) Belonging to the house or household and its relations.

(2) Addicted or adapted to family life, etc.

(3) Tame.

(4) Of or pertaining to one's own State or country.

It will be conceded that the sense in which Congress used the word is embraced either in No. 1 or No. 4. But the real intention is rendered obscure by the use of the word "other." The specific enumeration, "building, agricultural, and mining," is of no value whatever if the word "other" means "local," because Congress could easily have said "for *domestic purposes*" without any specific enumeration. We urge upon the court the simple proposition that Congress used the word "domestic" as belonging to the household. This makes it necessary to reject, as surplusage, the word "other," but how much nearer is this an adherence to the rule that effect, if possible, must be given to every word than to strike from the statute the three words "building, agricultural, mining?" This view makes it perfectly clear that Congress used the word "domestic" as meaning "household." In other words, it becomes perfectly apparent that Congress granted the right to use the timber for the specific purposes, viz, building, agricultural, and mining, and for domestic (household) purposes generally. Particularly is this view reasonable and tenable when we consider the object of the legislation which was to offer encouragement and aid to the individual settler. That the word "other" was unintentionally permitted to creep into the body of this act may be seen from the title, which

reads as follows: "An act authorizing citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes." It will be seen that the word "other" does not occur in this title.

Again, Congress provided, in the very beginning of the act, that the timber could be used only for domestic (local) purposes, by limiting the taking to *bona fide* residents of the States and Territories in which the license may be exercised. To limit the taking to *bona fide* residents is certainly to limit its use to the States and Territories of which such persons are residents.

It deserves the consideration of the court that Congress had already, at the same session and only a few weeks before it passed the act of June 3, 1878, under which this suit is sought to be defended, passed the act of April 30, 1878 (1 Sup. R. S. U. S., 159), which reads, in part, as follows:

> If any timber cut on the public lands shall be exported from the Territories of the United States it shall be liable to seizure by United States authority wherever found.

This general inhibition covers the word "domestic" in the sense of "local" and applies to timber cut in any of the Territories of the United States under any of the various permissive statutes.

To give force to the position we take the attention of the court is invited to the act of March 3, 1891, "An act to amend section 8 of an act approved March 3, one thousand eight hundred and ninety-one, entitled

'An act to repeal timber-culture laws and for other purposes.'" Said section 8, as amended, reads as follows:

> That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of said patents. And in the States of Colorado, Montana, Idaho, North Dakota and South Dakota, Wyoming, and the district of Alaska, and the gold and silver regions of Nevada, and the Territory of Utah, in any criminal prosecution or civil action by the United States for a trespass on such public timber lands or to recover timber or lumber cut thereon shall be a defense if the defendant shall show that the said timber was so cut or removed from the timber lands for use in such States or Territories by a resident thereof for *agricultural, mining, manufacturing, or domestic purposes* under rules and regulations made and prescribed by the Secretary of the Interior, and has not been transported out of the same, but nothing herein contained shall operate to enlarge the rights of any railway company, etc.

This statute has no direct application to the case at bar. It is merely cited to show that the word "other" was not used to indicate the same class of uses as those embraced by the specifically mentioned purposes. That the word "domestic" was not used in the sense

of "local" is clearly indicated by the condition that the timber shall not be transported out of the States or Territories in which it is cut. To give to the word "domestic," as used in the statute above quoted, the meaning of "local" would render superfluous the entire phrase "and has not been transported out of the same."

While there is no lack of faith in submitting the foregoing propositions, it may not be inappropriate to suggest to the court the only other tenable theory of the intention of Congress in framing the act, viz, to use the word "other" correlatively with the first two uses, i. e., building and agricultural, and to distinguish between those uses and "mining." In other words, it is fairly within the range of possibility that Congress considered the erection of dwellings and barns and the cultivation of the soil domestic operations and intended to distinguish between them and mining, the latter being an enterprise of greater magnitude and of a strictly commercial character. The title of the act, which reads "for mining and domestic purposes," supports this view of the case.

STATUTE MUST BE CONSTRUED STRICTLY.

If the real intention of Congress can not be ascertained from the act itself, or from the meaning of the words used therein, we urge that the character of the act must be considered and the proper rules of construction applied. The statute is permissive. Statutes which grant property privileges are to be construed most strictly in favor of the Government and a use not

unequivocally authorized by the language of the act must be excluded.

Sutherland, Stat. Const., sec. 378.

Slidell v. *Grandjean*, 111 U. S., 412, 437.

Central Transp. Co. v. *Pullman Co.*, 139 U. S., 24, 49.

United States v. *Dastervignes*, 118 Fed. Rep., 199, 200.

Endlich, section 354, says:

> As regards enactments of a local or personal character, which confer any exceptional exemption from a common burden, or invest private persons or bodies for their own benefit and profits with privileges and powers interfering with the property or rights of others, they are construed more strictly, perhaps, than any other kind of enactment. The courts take notice that they are obtained on the petitions framed by their promoters; and, in construing them, regard them, as they are in effect, contracts between those persons, or those whom they represent, and the legislature on behalf of the public. Their language is therefore treated as the language of their promoters, who ask the legislature for them; (the promoters, rather than the legislature, being considered as the framers); and when doubt arises as to the construction of that language, the maxim, ordinarily inapplicable to the interpretation of statutes, that *verba cartarum fortius accipiuntur contra preferentem*, or that words are to be understood most strongly against him who uses them, is justly applied. The benefit of the doubt is to

> be given to those who might be prejudiced by the exercise of the powers which the enactment grants, and against those who claim to exercise them. Even if such statutes were not regarded in the light of contracts (*a*), they would seem to be subject to strict construction on the same ground as grants from the Crown, to which they are analogous, are subject to it.
>
> * * * * *
>
> A legislative grant is, indeed, like any other legislative enactment, to be construed, if possible, so as to effect the intent of the grantors; if that intent is doubtful, under the statute making it, the rule of construction recognized as applicable requires the doubt to be resolved against the grantee, in favor of the public.

For the reasons given we think that the decisions of the Territorial courts of Arizona should be reversed and the case remanded for trial. Sparse as is the timber remaining in the arid portions of this country, there is neither reason nor justice in making wholesale use of it merely to cheapen the product of its mines or enhance the dividends of great and prosperous corporations by stretching the already liberal provisions made by Congress to an extent that will with certainty denude the mountains of that region and eventually bring about a train of evils already apparent in many ways.

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